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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 CHRISTOPHER BARULICH,
16 individually and on behalf of others
similarly situated,

17 Plaintiff,

18 vs.

19 THE HOME DEPOT, INC.,
20 a Delaware corporation, and
GOOGLE LLC,
21 a Delaware limited liability company,

22 Defendants.

Case No. 2:24-cv-01253-FLA-JC

**THE HOME DEPOT, INC.'S NOTICE
OF MOTION, MOTION TO DISMISS,
AND MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS
PLAINTIFF'S CLASS ACTION
COMPLAINT FOR LACK OF
PERSONAL JURISDICTION**

(Fed. R. Civ. P. 12(b)(2))

Hearing Date: June 7, 2024
Hearing Time: 1:30 p.m.
Judge: Hon. Fernando L.
Aenlle-Rocha
Courtroom: 6B

[Filed concurrently with Proposed
Order]

NOTICE OF MOTION AND MOTION

TO THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF

RECORD: PLEASE TAKE NOTICE THAT on June 7, at 1:30 p.m., before the Honorable Fernando L. Aenlle-Rocha, in Courtroom 6B located in the First Street Courthouse, 350 W. 1st Street, Courtroom 6B, 6th Floor, Los Angeles, California 90012, Defendant The Home Depot, Inc. (“Home Depot”) will and hereby does move this Court for an order granting its Motion to Dismiss the Complaint for Lack of Personal Jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2). This Motion is made on the basis that the Complaint fails to allege that the Court has either general or specific personal jurisdiction over Home Depot.

Home Depot’s Motion to Dismiss is based upon this Notice of Motion and Motion, the following Memorandum of Points and Authorities, the Reply to be filed in support of this Motion, oral argument of counsel at the hearing, and any other matters this Court may properly consider by judicial notice or otherwise.

CERTIFICATION OF CONFERENCE

Home Depot’s Motion to Dismiss is made following the conference of counsel pursuant to Local Rule 7-3, which took place on April 9, 2024.

INTRODUCTION

On February 14, 2024, Plaintiff Christopher Barulich brought this putative class action against defendants The Home Depot, Inc.¹ (“Home Depot”) and Google LLC (“Google”), alleging that he placed a call to Home Depot’s customer service line that was recorded by Google’s Cloud Contact Center AI technology (“CCAI”) in violation of the California Invasion of Privacy Act (“CIPA”), Cal. Penal Code § 630, *et seq.* Based on this alleged conduct, Barulich asserts two claims under CIPA. Count One alleges that Google unlawfully listened to, recorded, and analyzed customer service calls with Home Depot. Count Two alleges that Home Depot violated CIPA by aiding and abetting Google’s conduct. Home Depot disputes Barulich’s claims; however, this Court need not reach the merits of those arguments. Instead, the Court should dismiss Home Depot from this action for lack of personal jurisdiction.

Contrary to Barulich’s conclusory assertions in the Class Action Complaint (“Complaint” or “Compl.”), this Court does not have personal jurisdiction over Home Depot. Indeed, the Southern District of California recently held that it lacked jurisdiction over Home Depot based on the alleged use of similarly ubiquitous technology. *Kauffman v. Home Depot, Inc.*, No. 23-CV-0259-AGS-AHG, 2024 WL 221434, at *3 (S.D. Cal. Jan. 19, 2024) (granting motion to dismiss CIPA claim based on Home Depot’s use of “session replay” technology on its public website). To elaborate, the Court lacks general personal jurisdiction over Home Depot because—as Barulich acknowledges—Home Depot “is a Delaware corporation with its headquarters located in Atlanta, Georgia.” Compl. ¶ 8. In addition, the Court lacks specific personal jurisdiction over Home Depot because it did not purposefully direct any relevant conduct at California, and Barulich’s

¹ Barulich improperly names The Home Depot, Inc. as a defendant in this case. The Home Depot, Inc. is not a retailer and has made no contact with Barulich. It is the parent company of Home Depot, U.S.A., Inc., which is a home improvement retailer. *See* Defendant Home Depot Inc.’s Corporate Disclosure Statement and Notice of Interested Parties. In any event, the Court lacks personal jurisdiction over both these entities.

claim does not arise out of or relate to Home Depot’s forum-related activities. For these reasons, the Court should dismiss Home Depot from this action under Federal Rule of Civil Procedure 12(b)(2).

BACKGROUND

Barulich’s Complaint offers virtually no information about Home Depot’s alleged contact with California. To begin, Barulich acknowledges that Home Depot “is a Delaware corporation with its headquarters located in Atlanta, Georgia.” Compl. ¶ 8. Nonetheless, he claims that “[t]his Court has personal jurisdiction over Home Depot because Home Depot conducts systematic and continuous business in California, directs advertising to California residents, and maintains a substantial retail store presence across the state.” *Id.* ¶ 11. Barulich offers no detail about this alleged “advertising.” The Complaint only states that “Home Depot has more than 2,300 stores in North America and over 230 stores in California alone,” more “than in any other state in the country.” *Id.* ¶ 8. Notably, Barulich does not allege how the remaining 2,070 stores are distributed among the remaining states or even how that distribution compares to Home Depot’s worldwide presence. Moreover, Barulich does not allege that Home Depot made any effort to reach out to him. Instead, Barulich states that he is a California resident who called a Home Depot customer service line while he happened to be in California. *Id.* ¶ 7. He does not allege that he called a Home Depot California store or even that Home Depot called *him*.

ARGUMENT

As a matter of blackletter law, “the plaintiff bears the burden of demonstrating that the court has jurisdiction over the defendant.” *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). “Where, as here, there is no applicable federal statute governing personal jurisdiction, the district court applies the law of the state in which the district court sits.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800–01 (9th Cir. 2004); *see* Fed. R. Civ. P. 4(k)(1)(A). “Because California’s long-arm jurisdictional statute is coextensive with federal due process requirements, the jurisdictional analyses

1 under state law and federal due process are the same.” *Id.*; see Cal. Civ. Proc. Code
 2 § 410.10. To satisfy those due process requirements, courts may only exercise personal
 3 jurisdiction over defendants who have minimum contacts with the forum such that the
 4 exercise of jurisdiction “does not offend traditional notions of fair play and substantial
 5 justice.” *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (quotations omitted).

6 “There are two forms of personal jurisdiction that a forum state may exercise over
 7 a nonresident defendant—general jurisdiction and specific jurisdiction.” *Boschetto v.*
 8 *Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008); see *Bristol-Myers Squibb Co. v. Super.*
 9 *Ct. of Cal.*, 582 U.S. 255, 260–61 (2017). On one hand, general personal jurisdiction
 10 turns on whether the defendant “is fairly regarded as at home” in the forum and thus
 11 subject to a court adjudicating “any claim against [it].” *Id.* at 1780. On the other hand,
 12 specific jurisdiction is proper where the suit “aris[es] out of or relate[s] to the defendant’s
 13 contacts with the forum” “but only as to a narrower class of claims.” *Daimler AG v.*
 14 *Bauman*, 571 U.S. 117, 127 (2014); *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592
 15 U.S. 351, 359 (2021). Where, as here, a complaint “establishe[s] neither general nor
 16 specific jurisdiction over” the defendant in the forum, then the court must dismiss the
 17 lawsuit for want of jurisdiction. *Schwarzenegger*, 374 F.3d at 807.

18 **I. HOME DEPOT IS NOT SUBJECT TO GENERAL PERSONAL**
 19 **JURISDICTION IN CALIFORNIA.**

20 Barulich’s Complaint does not allege that Home Depot is incorporated in
 21 California or that it maintains its principal place of business in the State—the “paradigm
 22 bases for general jurisdiction.” *Daimler*, 571 U.S. at 137 (alterations adopted); see also
 23 *BNSF Ry. Co. v. Tyrrell*, 581 U.S. 402, 414 (2017). Rather, Barulich acknowledges that
 24 Home Depot is a “Delaware corporation with its headquarters located in Atlanta,
 25 Georgia.” Compl. ¶ 8. Thus, the Court “presumptively lacks general personal
 26 jurisdiction.” *Crouch v. Ruby Corp.*, 639 F. Supp. 3d 1065, at 1075 (S.D. Cal. Nov. 7,
 27 2022).

28 Some courts have posited that in an “exceptional case,” general jurisdiction might

lie against a corporation outside of its state of incorporation/organization or principal place of business. *See Angelini Metal Works Co. v. Hubbard Iron Doors, Inc.*, 2016 WL 6304476, at *3 (C.D. Cal. Jan. 5, 2016) (quoting *Daimler*, 571 U.S. at 139 and *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014)). That exception is largely hypothetical, however, and even those courts have rejected the argument that general jurisdiction is appropriate wherever a corporation “engages in [] substantial, continuous, and systematic course of business.” *Daimler*, 571 U.S. at 138; *Angelini Metal Works Co.*, 2016 WL 6304476, at *3. Indeed, a “corporation that operates in many places can scarcely be deemed at home in all of them.” *Daimler*, 571 U.S. at 139 n.20. Whether such an exception can apply depends on “an appraisal of a corporation’s activities in their entirety, nationwide and worldwide.” *Id.*

This case is no exception to the general rule. Barulich claims that the Court has personal jurisdiction because “Home Depot conducts systematic and continuous business in California, directs advertising to California residents, and maintains a substantial retail store presence across the state.” Compl. ¶ 11. The Complaint provides no information about this alleged “advertising.” Instead, it states only that “Home Depot has more than 2,300 stores in North America and over 230 stores in California alone” and “owns and operates more stores in California than in any other state in the country.” *Id.* ¶ 8. Notably, Barulich provides no meaningful details as to how Home Depot’s alleged California contacts compare to those in other states (e.g., how the remaining 2,070 stores are distributed). Nor does Barulich allege any facts relating to Home Depot’s “activities worldwide—not just the extent of its contacts in [California]—to determine where it can be rightly considered at home.” *In re Packaged Seafood Prods. Antitrust Litig.*, 338 F. Supp. 3d 1118, 1141 (S.D. Cal. 2018). Without that comparison, Barulich’s barebones assertion that Home Depot conducts business in California (as do many other businesses) does not demonstrate that Home Depot is otherwise “at home” in California for purposes of general jurisdiction. *See, e.g., Licea v. Caraway Home Inc.*, No. EDCV 22-1791 JGB (SHKx), 655 F. Supp. 3d 954, 967 (C.D. Cal. Feb. 9, 2023) (failure to establish general

jurisdiction where complaint merely stated that defendant “does business with California residents”).

II. HOME DEPOT IS NOT SUBJECT TO SPECIFIC PERSONAL JURISDICTION IN CALIFORNIA.

Absent general personal jurisdiction, this Court can only adjudicate Barulich’s claim if it has specific jurisdiction over Home Depot. But specific jurisdiction is only proper where (1) the defendant “purposefully availed” itself of or “purposefully direct[ed]” its activities toward the forum; (2) the claim “arises out of or relates to the defendant’s forum-related activities”; and (3) the exercise of jurisdiction is “reasonable.” *Schwarzenegger*, 374 F.3d at 802; *see also Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015). In cases sounding in tort, like the CIPA claim here, claims are analyzed under the “purposeful direction” framework, using the three-part effects test articulated in *Calder v. Jones*, 465 U.S. 783 (1984). *Briskin v. Shopify, Inc.*, 87 F.4th 404, 412 (9th Cir. 2023). *See Matera v. Google Inc.*, 2016 WL 5339806, at *10 (N.D. Cal. Sept. 23, 2016) (agreeing that CIPA claims bore a close relationship to the tort of invasion of privacy). “Under this test, ‘the defendant allegedly must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.’” *Briskin*, 87 F.4th at 412 (finding no specific personal jurisdiction against a defendant who offered a web-based payment processing platform to merchants nationwide because plaintiff’s claim had to, but did not, arise out of or relate to Shopify’s forum-related activities) (quoting *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011)). Additionally, “[d]ue process requires that a defendant be haled into court in a forum state based on his own affiliation with the [s]tate, not based on the ‘random, fortuitous, or attenuated’ contacts he makes by interacting with other persons affiliated with the State.” *Walden*, 571 U.S. at 286.

Evaluating whether a claim “arises out of” or “relates to” a defendant’s forum-related activities requires an “examin[ation of] the plaintiff’s specific injury and its connection to the forum-related activities in question.” *Briskin*, 87 F.4th at 413

(discussing distinction between “arising out of” or “relating to”). For purposes of this analysis, the Ninth Circuit has recently clarified that for a claim to “arise out of” a defendant’s business contacts, there must be a “causal relationship” between the two. *Id.* at 414. And while personal jurisdiction may be based on business activities that “relate to” a claim without a causal showing, that prong still “incorporates real limits, as it must to adequately protect defendants foreign to a forum.” *Id.* Accordingly, there must be “a strong, direct connection between the defendant’s forum-related activities and the plaintiff’s claims.” *Id.*

Here, Barulich has not demonstrated that his claim “arises out of” or “relates to” Home Depot’s forum-related activities, or that Home Depot expressly aimed any relevant conduct at California. The Complaint states that “Home Depot conducts systematic and continuous business in California, directs advertising to California residents, and maintains a substantial retail store presence across the state,” but these “boilerplate allegations” do not establish personal jurisdiction. Compl. ¶ 11; *see Talavera Hair Prods., Inc. v. Taizhou Yunsung Elec. Appliance Co.*, No. 18-CV-823-JLS (JLB), 2020 WL 6504947, at *2–3 (S.D. Cal. Nov. 5, 2020). Barulich does not allege that he viewed this unspecified advertising, visited a California-based Home Depot store, or even bought any products from Home Depot in the state. *See Bradley v. T-Mobile US, Inc.*, No. 17-cv-07232-BLF, 2020 WL 1233924, at *15 (N.D. Cal. Mar. 13, 2020) (“[M]ost courts have concluded that a nationwide advertising campaign is not ‘expressly aimed’ to each state in which the advertisement appears.”); *Briskin*, 87 F.4th at 414 (concluding that non-resident defendant’s in-state contacts, which included a physical location, had “nothing to do” with the plaintiff’s claims). But more importantly, Barulich’s CIPA claim—which is based solely on his calls to Home Depot’s customer service line—has *nothing* to do with any of these alleged contacts. To the extent Barulich claims that Home Depot’s “broader business actions in California set the wheels in motion for [Home Depot] to eventually inflict privacy-related harm on him in California,” that amounts to “a butterfly effect theory of specific jurisdiction” that the Ninth Circuit has found “far

1 too expansive to satisfy due process.” *Briskin*, 87 F.4th at 415; *Kauffman*, 2024 WL
 2 221434, at *3 (holding that plaintiff’s alleged “purchase of a physical product did not
 3 cause his data capture” and was therefore irrelevant to the personal jurisdiction analysis).

4 Nor does the Complaint demonstrate that Home Depot expressly aimed any
 5 conduct at California. For a court to exercise specific personal jurisdiction, the suit must
 6 “relate to the defendant’s contacts with the *forum*”—not the plaintiff’s contacts with the
 7 forum or the defendant’s contacts with the plaintiff. *Bristol-Myers*, 582 U.S. at 262
 8 (cleaned up; emphasis in original) (quoting *Daimler*, 571 U.S. at 118). “[A] defendant’s
 9 relationship with a plaintiff or third party, standing alone, is an insufficient basis for
 10 jurisdiction.” *Walden*, 571 U.S. at 286. Nothing in the Complaint establishes that Home
 11 Depot targeted California. Rather, Barulich’s claim is based on *his decision* to place calls
 12 from California to Home Depot’s customer service phone line and the alleged recording
 13 of those calls. *See* Compl. ¶¶ 20–23. In other words, Barulich does not allege that *Home*
 14 *Depot* “target[s] California or distinguish[es] California from any other state where [the
 15 line] is accessible.” *See Massie*, 2021 WL 2142728, at *4; *see also Yeager v. Airbus Grp.*
 16 *SE*, No. 8:19-cv-01793-JLS-ADS, 2021 WL 750836, at *6 (C.D. Cal. Jan. 26, 2021)
 17 (noting that “express aiming” requires that defendant “targets California consumers
 18 above and beyond consumers in any other geographic locations”). Relatedly, Barulich
 19 fails to plead that Home Depot knew that any “harm” allegedly caused by its actions “was
 20 more likely to cause harm in California than any other forum.” *See Sacco v. Mouseflow,*
 21 *Inc.*, No. 2:20-cv-02330-TLN-KJN, 2022 WL 4663361, at *5 n.2 (E.D. Cal. Sept. 30,
 22 2022).

23 Ultimately, Barulich’s decision to call the Home Depot customer service line from
 24 California is a “unilateral activity” that does not support finding specific jurisdiction over
 25 Home Depot. *See Walden*, 571 U.S. at 284; *Chan v. UBS AG*, No. LA CV18-04211 JAK
 26 (FFMx), 2019 WL 6825747, at *8 (C.D. Cal. Aug. 5, 2019) (explaining that plaintiff’s
 27 placing phone calls from California to a defendant outside of the forum “is the type of
 28 unilateral decision that cannot establish jurisdiction,” since the plaintiff could have called

the defendant “from anywhere in the world”); *Moledina v. Marriott Int’l, Inc.*, 635 F. Supp. 3d 941, 950 (C.D. Cal. 2022) (“Plaintiff’s unilateral decision to reach out of California to contact Defendant located elsewhere and Defendant’s recording of that communication, without more, cannot satisfy the express aiming requirement.”). Accordingly, this Court should dismiss Barulich’s claim against Home Depot for lack of personal jurisdiction.² See *Chan*, 2019 WL 6825747, at *12; *Moledina*, 635 F. Supp. 3d at 950; *Kauffman*, 2024 WL 221434, at *2–3.

CONCLUSION

For the foregoing reasons, this Court should dismiss Home Depot for lack of personal jurisdiction.

Dated: April 19, 2024

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² Barulich cannot remedy his deficient jurisdictional allegations based on Google’s California-based contacts. While “[t]he Ninth Circuit has stated that, ‘[f]or purposes of personal jurisdiction, the actions of an agent are attributable to the principal,’” Barulich does not allege that Google was acting as an agent of Home Depot. See *Cohodes v. MiMedx Grp., Inc.*, 2022 WL 15523079, at *2 (N.D. Cal. Oct. 27, 2022) (quoting *Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990)). Nor can Barulich use other “exotic theories of imputing contacts,” including “‘single enterprise,’ ‘aiding and abetting,’ and ‘ratification,’” which “are not valid theories of establishing personal jurisdiction in the Ninth Circuit” See *Iconlab Inc. v. Valeant Pharms. Int’l, Inc.*, No. 8:16-cv-01321-JLS-KES, 2017 WL 7240856, at *6 (C.D. Cal. Apr. 25, 2017), *aff’d sub nom. Iconlab, Inc. v. Bausch Health Cos., Inc.*, 828 F. App’x 363 (9th Cir. 2020).

LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for The Home Depot, Inc., certifies that this brief contains 2,732 words, which complies with the word limit of L.R. 11-6.1.

Dated: April 19, 2024

KING & SPALDING LLP

/s/ Julia E. Romano

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